

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:03cr67-MU**

UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 )  
                                )  
vs.                         )                           **ORDER**  
                                )  
LEWIS MOSES BYRD,         )  
                                )  
                                )  
Defendant,                 )  
                                )

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**THIS MATTER** comes before the Court upon Defendant's Motion to Correct Sentence, filed January 30, 2006.

On April 29, 2003, Defendant was indicted for violating 21 U.S.C. § 841, 18 U.S.C. § 924C, and 18 U.S.C. § 922. On December 23, 2005, the parties filed a plea agreement. On January 7, 2006, Defendant entered a plea of "guilty" at his Rule 11 hearing. On January 24, 2006, this Court sentenced Petitioner to 262 months imprisonment for violating 21 U.S.C. § 841 and a consecutive term of imprisonment of 120 months for violating 18 U.S.C. § 924(c). On January 26, 2006, Defendant filed a Notice of Appeal. His appeal is currently pending before the United States Court of Appeals for the Fourth Circuit.

Defendant has filed the instant motion pursuant to Rule 35(a) of the Criminal Rules of Federal Procedure arguing that his sentence was erroneous because he had been promised a sentence of 262 months by the undersigned as well as by his attorney.

Rule 35(a) permits a court to "correct a sentence that resulted from arithmetical, technical or other clear error." Defendant's argument does not fall within the purview of

Rule 35(a). Moreover, after reviewing the record, this Court concludes that no arithmetical, technical or other clear error occurred in Defendant's case and his motion is denied.

**IT IS, THEREFORE, ORDERED** that Defendant's Motion to Correct Sentence is **DENIED**.

Signed: February 9, 2006



Graham C. Mullen  
United States District Judge

